



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/171436

PRELIMINARY RECITALS

Pursuant to a petition filed January 19, 2016, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on February 11, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency has met its burden to show that petitioner exhausted 3 Time Limited Benefit (TLB) months and therefore correctly discontinued petitioner's FoodShare for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements effective January 1, 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In June 2015 petitioner had a FS renewal. He was referred to FSET, and on June 3, 2015 the agency issued a FSET referral letter to him. See Exhibit 3.
3. On July 14, 2015 the petitioner enrolled in FSET and signed an Employability Plan (EP). See Exhibit 5. His first TLB was July. Petitioner did not meet his FSET requirements for that month.
4. Petitioner worked approximately 75.75 hours in August 2015. He completed 67 hours of employment search in August 2015. See Exhibit 6 and 7.
5. Petitioner met his FSET requirements in September, October, and November 2015.
6. Petitioner was referred to FSET again in November 2015. See Exhibit 3.
7. Petitioner did not meet his FSET requirements for December 2015.
8. On December 18, 2015 the agency issued a notice of decision to petitioner stating that his FS would end January 1, 2016 because he had used 3 months of TLBs.

DISCUSSION

Pursuant to a provision of Wisconsin's 2007-2009 biennial budget, Wisconsin has operated a voluntary FoodShare Employment and Training (FSET) program since 2008. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of FS benefits to three full months in a 36-month time period for Able-Bodied Adults without Dependents (ABAWDs) who do not meet the work requirement or meet an exemption from the work requirement. As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat. §49.79(10), which required FS eligibility and work requirements for ABAWDs to be implemented in Wisconsin beginning in 2014, consistent with federal regulations 7 CFR §273.7 and 7 CFR §273.24.

Under ABAWD rules, childless, able-bodied adults must either meet ABAWD work requirements or be exempt from the work requirement in order to receive FoodShare (FS) benefits. See *FS Handbook* §3.17.1.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. ABAWDs who are not exempt and who do not meet the work requirement are only allowed to receive 3 full months of time-limited benefits (TLBs) in a 36-month period. *Id.*

The issue in this case is whether the agency correctly determined that petitioner used 3 TLBs and therefore correctly seeks to terminate his FS. The agency's position at hearing was that petitioner did not complete his FSET requirements for July, August and December 2015. The agency's testimony was that petitioner had no FSET participation for July or December, but did have 67 hours of employment search in August. Petitioner testified that he did work during July and August and provided the paystubs to verify those hours. See Exhibit 7. Unfortunately for petitioner, the July hours do still not show him meeting the 80 hour requirement. The employment hours for August however, clearly put him over the 80 hour requirement when combined with his completed employment search. There was no employment search hours or work hours for December, however. Petitioner stated that he applied for unemployment compensation (UC) during November or December, but that he was not receiving UC, nor complying with UC work requirements in December. One of the exemptions from FSET includes receiving UC or having applied for UC and complying with UC work requirements. See *FS Handbook*, § 3.17.1.5. Accordingly, I find that he did exhaust two TLBs for July and December 2015, but that August should not have been counted as a TLB.

In a hearing such as this for FS, it is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80

(Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In other words, the agency must show why it did what it did. The agency was unable to rebut petitioner's direct testimony and evidence as to August 2015. The FSET worker in question was not made available for the hearing to rebut petitioner's version. I therefore find that the agency has not met its burden to show that petitioner used the 3 TLBs and therefore seeks to discontinue his FS on that basis. As such, I am remanding the matter so that the agency can remove those August 2015 as a TLB.

CONCLUSIONS OF LAW

1. The agency has not met its burden to show that petitioner exhausted 3 TLB months.
2. The agency has not met its burden to show that it correctly seeks to discontinue petitioner's FS for failing to meet ABAWD work requirements effective January 1, 2016.

THEREFORE, it is

ORDERED

That the matter is remanded to the FSET agency with instructions to take the administrative steps necessary to reverse the determination that petitioner exhausted a TLB in August 2015. The matter is further remanded to the county agency with instructions to take the administrative steps necessary to reverse the January 1, 2016 closure of petitioner's FS case for failing to meet ABAWD work requirements. This shall be done within ten (10) days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of March, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 14, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability